



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIVEDITA T. KULKARNI,

Plaintiff,

-against-

ACTAVIS GENERICS, et al.,

Defendants.

22-CV-05735 (PAE) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

The Court has received and reviewed (i) plaintiff's letter requesting leave to file an amended complaint and four weeks within which to do so (Dkt. 33), and (ii) defendants' letter opposing that request. (Dkt. 34.) Defendants argue that plaintiff must submit her proposed amended complaint for the Court's review before she may seek leave to file it. In addition, defendants point out that they have moved to dismiss plaintiffs' claims on federal preemption and personal jurisdiction grounds (Dkts. 21, 23), and argue that the proposed amendment will likely be futile. (*Id.*) The Court notes that plaintiff's opposition to the motions to dismiss was due yesterday (*see* Dkt. 31), but no opposition has been filed.

Defendants are correct that any motion by plaintiff to amend her complaint must be accompanied by the proposed amended pleading. The Court explained this on December 13, 2022, when it denied plaintiff's initial request to file an amended complaint, made the previous day, but gave her leave to "renew her motion, *attaching a proposed amended pleading that satisfies Rule 8(a)*, once she has served the initial defendants, as required, and filed proof of such service on the docket." (Dkt. 15 at 2 (emphasis added).)

If plaintiff believes that her amended complaint could overcome the issues raised in defendants' motion to dismiss, she may file a motion for leave to amend, *attaching her proposed amended complaint*, no later than **March 22, 2023**. In light of that anticipated motion, the Court

further extends plaintiff's time to oppose defendants' motions to dismiss. Her opposition papers will also be due **March 22, 2023**. Defendants' reply papers will be due on **April 14, 2023**.

Plaintiff is advised that, in order to defeat defendants' motion to dismiss, she must demonstrate *either* that her existing complaint states a claim that is plausible on its face and is not preempted by federal law *or* that her proposed amended complaint meets that standard. In addition, she must demonstrate that this Court may exercise personal jurisdiction over defendant Teva Ltd. and that it has been properly served. The filing of a proposed amended complaint, standing alone, will not prevent the dismissal of her case if the Court determines that defendants' motions are well founded.

Dated: New York, New York
February 22, 2023

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge